

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO SUMMARY ORDERS FILED AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY THIS COURT'S LOCAL RULE 0.23 AND FEDERAL RULE OF APPELLATE PROCEDURE 32.1. IN A BRIEF OR OTHER PAPER IN WHICH A LITIGANT CITES A SUMMARY ORDER, IN EACH PARAGRAPH IN WHICH A CITATION APPEARS, AT LEAST ONE CITATION MUST BE TO THE FEDERAL APPENDIX OR BE ACCOMPANIED BY THE NOTATION: "(SUMMARY ORDER)." UNLESS THE SUMMARY ORDER IS AVAILABLE IN AN ELECTRONIC DATABASE WHICH IS PUBLICLY ACCESSIBLE WITHOUT PAYMENT OF FEE (SUCH AS THE DATABASE AVAILABLE AT [HTTP://WWW.CA2.USCOURTS.GOV/](http://www.ca2.uscourts.gov/)), THE PARTY CITING THE SUMMARY ORDER MUST FILE AND SERVE A COPY OF THAT SUMMARY ORDER TOGETHER WITH THE PAPER IN WHICH THE SUMMARY ORDER IS CITED. IF NO COPY IS SERVED BY REASON OF THE AVAILABILITY OF THE ORDER ON SUCH A DATABASE, THE CITATION MUST INCLUDE A REFERENCE TO THAT DATABASE AND THE DOCKET NUMBER OF THE CASE IN WHICH THE ORDER WAS ENTERED.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, in the City of New York, on the 16th day of May, two thousand seven.

PRESENT: HONORABLE JON O. NEWMAN,
HONORABLE JOHN M. WALKER, JR.,
HONORABLE CHESTER J. STRAUB,
Circuit Judges.

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NATIONAL ABORTION FEDERATION, MARK I. EVANS, M.D.,
CAROLYN WESTHOFF, M.D., CASSING HAMMOND, M.D.,
MARC HELLER, M.D., TIMOTHY R.B. JOHNSON, M.D.,
STEPHEN CHASEN, M.D., and GERSON WEISS, M.D.,

Plaintiffs-Appellees,

v.

No. 04-5201-cv

1 **ALBERTO GONZALES, in his capacity as Attorney**
2 **General of the United States, along with his**
3 **officers, agents, servants, employees, and**
4 **successors in office,**

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6 **Defendants-Appellants.**

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10 **FOR PLAINTIFFS-APPELLEES** Talcott Camp, Deputy Director,
11 American Civil Liberties Union, New
12 York, New York

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14 **FOR DEFENDANTS-APPELLANTS** Elizabeth Wolstein, Assistant
15 United States Attorney (Michael J.
16 Garcia, United States Attorney for
17 the Southern District of New York,
18 on the brief), New York, New York.

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21 By order dated March 7, 2006, this court stayed further
22 briefing on the issue of remedy pending the decision by the
23 Supreme Court in Gonzales v. Carhart, No. 05-380. On April 18,
24 2007, the Supreme Court rendered its decision in Carhart, 127 S.
25 Ct. 1610 (2007), upholding the Partial-Birth Abortion Ban Act of
26 2003 against a facial attack identical to the one in this case.
27 We requested supplemental briefing on the effect of that decision
28 on this appeal, Nat'l Abortion Fed'n v. Gonzales, No. 04-5201-cv,
29 2007 WL 1238861 (2d Cir. Apr. 25, 2007), and the plaintiffs-
30 appellees have now conceded that Carhart precludes relief on
31 their facial challenge.

32 Accordingly, it is hereby ordered that the opinion, partial
33 judgment, and order to brief the issue of remedy in National
34 Abortion Federation v. Gonzales, 437 F.3d 278 (2d Cir. 2006), are

1 **VACATED.** Further, our stay of briefing on the issue of remedy is
2 **VACATED** as moot. The judgment of the district court is **VACATED**,
3 and we **REMAND** the case with instructions to enter judgment for
4 the government pursuant to Carhart.

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8 For the Court
9 Thomas Asreen, Acting Clerk
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13 By: _____
14 Lucille Carr, Deputy Clerk